

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

TUESDAY, THE 27TH DAY OF OCTOBER 2015/5TH KARTHIKA, 1937

WP(C).No. 34557 of 2014 (T)

PETITIONER(S):

**SAJI SAMUEL, KAMUKAMPALLIL HOUSE,
KODAL P.O., PATHANAMTHITTA.**

**BY ADVS.SRI.GEORGE VARGHESE(PERUMPALLIKUTTIYIL)
SRI.A.R.DILEEP
SRI.MANU SEBASTIAN
SMT.PARVATHY NAIR**

RESPONDENT(S):

- 1. STATE OF KERALA
REPRESENTED BY ITS SECRETARY TO THE DEPARTMENT OF HOME,
GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM - 695 001.**
- 2. DIRECTOR GENERAL OF POLICE
OFFICE OF DIRECTOR GENERAL OF POLICE,
THIRUVANANTHAPURAM - 695 001.**
- 3. ADDITIONAL DIRECTOR GENERAL OF POLICE
SOUTH ZONE, THIRUVANANTHAPURAM-695 001.**
- 4. DEPUTY SUPERINTENDENT OF POLICE
CRIME BRANCH, ECONOMIC OFFENCES WING - I, PATHANAMTHITTA - 689 645.**
- 5. INSPECTOR OF POLICE, KONNY POLICE STATION
PATHANAMTHITTA DISTRICT-689 691.**
- 6. STATION HOUSE OFFICER, KODAL POLICE STATION
PATHANAMTHITTA DISTRICT-689 693.**
- 7. STATION HOUSE OFFICER
NOORANADU POLICE STATION,
ALAPPUZHA DISTRICT-690 504.**
- 8. AJITH KUMAR
MANIMANDIRAM, PANAYIL P.O., NOORANAD
NOW RESIDING AT WARD NO.I, VALLIKODU PANCHAYATH
NARAYAPURAM P.O, KOZHENCHERRY
PATHANAMTHITTA - 689 645.**

R1 - R 7 BY PUBLIC PROSECUTOR SMT. MAYA

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 27-10-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P-1: A TRUE COPY OF FIR IN CRIME NO.400/09 OF NOORANADU POLICE STATION.

EXT.P-2: A TRUE COPY OF FIR IN CRIME NO.351/09 OF KODAL POLICE STATION.

EXT.P-3: A TRUE COPY OF REFER REPORT FILED BY THE 6TH RESPONDENT BEFORE THE HON'BLE COURT OF JUDICIAL MAGISTRATE OF FIRST CLASS, PATHANAMTHITTA.

EXT.P-4: A TRUE COPY OF REPORT NO.AS-05/10 DATED 7.7.2010 OF THE STATE FORENSIC SCIENCE LABORATORY.

EXT.P-5: A TRUE COPY OF CMP NO.2363/09 FILED BY THE PETITIONER BEFORE THE HON'BLE COURT OF JUDICIAL MAGISTRATE OF FIRST CLASS, MAVELIKKARA.

EXT.P-6: A TRUE COPY OF ORDER NO.D1-1647/2010/SZ DATED 18.6.2010 ISSUED BY THE 3RD RESPONDENT

EXT.P-7: A TRUE COPY OF ORDER DATED 7.8.2010 IN CMP 2496/10 ON THE FILES OF HON'BLE COURT OF JUDICIAL MAGISTRATE OF FIRST CLASS-II, MAVELIKKARA.

EXT.P-8: A TRUE COPY OF CMP 2722/11 FILED BEFORE THE COURT OF JUDICIAL FIRST CLASS MAGISTRATE II MAVELIKKARA.

EXT.P-9: A TRUE COPY OF ORDER DATED 20.8.2011 IN CMP 2722/11 OF THE COURT OF JUDICIAL FIRST CLASS MAGISTRATE II MAVELIKKARA.

EXT.P-10: A TRUE COPY OF CMP 3311/11 FILED BEFORE THE COURT OF JUDICIAL FIRST CLASS MAGISTRATE II MAVELIKKARA.

EXT.P-11: A TRUE COPY OF ORDER DATED 12.12.2011 IN CMP 3311/11 OF THE COURT OF JUDICIAL FIRST CLASS MAGISTRATE II, MAVELIKKARA.

EXT.P-12: A TRUE COPY OF THE FINAL REPORT FILED IN CRIME 596/CR/KIM/10 (CRIME NO.278/10 OF KODAL P.S., PREVIOUS CRIME NO.400/09 OF NOORANADU P.S)

EXT.P-13: A TRUE COPY OF CMP 126/14 FILED BY THE PETITIONER BEFORE THE COURT OF JUDICIAL FIRST CLASS MAGISTRATE, PATHANAMTHITTA.

EXT.P-14: A TRUE COPY OF APPLICATION MADE BY THE PETITIONER UNDER THE RTI ACT AND THE REPLY RECEIVED THERETO.

EXT.P-15: A TRUE COPY OF ORDER NO.H2-22074/2010 DATED 30.08.2010 OF S.P, PATHANAMTHITTA

EXT.P-16: A TRUE COPY OF ORDER NO.H2-27/PR/2010 DATED 08.01.2011 OF S.P, PATHANAMTHITTA

EXT.P-17: A TRUE COPY OF MEMORANDUM OF ASSOCIATION DATED 30.06.2007.

RESPONDENT(S)' EXHIBITS: NIL

//TRUE COPY//

bp

P.A. TO JUDGE

B. KEMAL PASHA, J.

.....
W.P.(C) No.34557 of 2014
.....

Dated this the 27th day of October, 2015

J U D G M E N T

The petitioner is the defacto complainant in Crime No.400/09 of the Nooranadu Police Station registered for the offences punishable under Sections 405, 406, 420, 463, 464, 465, 467, 468 and 471 of the Indian Penal Code. It has been specifically alleged that a cheque for 25,000/- AED issued by him to the 8th respondent herein was altered materially by the 8th respondent and he made the endorsement in the cheque as 2,50,000/- AED instead of the original amount of 25,000/- AED. The said cheque was subjected to examination by an expert. On expert

examination, Ext.P4 report was obtained in which it has been categorically concluded as *“The existing entry read as '250000/-(AED)' is an altered entry. In the initial entry '25000', a 'zero' was seen added to the right side and the entry was altered as '250000'.”*

2. The investigating officer, who has investigated the matter, has also clearly concluded in Ext.P12 final report that the investigation has revealed that originally the entry in the cheque was 25,000/- AED and the same was subsequently altered to 2,50,000/- AED. It was the 8th respondent, who had made use of such a materially altered cheque. Even then, it seems that the investigating officer has taken a view that there is no chance for a successful prosecution. It is not for the investigating officer to weigh and value the the said evidence collected by the investigating officer. The view taken by the investigating officer that the evidence from Ext.P4 will not lead to a successful prosecution, is unfounded and premature. It is

for the court to decide whether the alleged acts committed by the 8th respondent can lead to a successful prosecution or not.

3. It is evident that the investigating officer is proceeding with the investigation of Crime No.351/09, Koodal Police Station registered against the petitioner at the instance of the 8th respondent, and he has stopped the investigation in Crime No.400/09 of the Nooranadu Police Station as against the 8th respondent. A final report has also been filed by referring the matter. As international ramifications are there in the matter, it may not be advisable to the petitioner to approach the court below with a protest complaint in the matter. A further investigation in the matter under Section 173(8) Cr.P.C. is required. The Additional Director General of Police, Crime Branch shall decide as to the officer to whom such further investigation has to be entrusted, and issue orders within two weeks from the date of receipt of a copy of this judgment, by handing over such a

further investigation to such an investigating officer.

In the result, this Writ Petition is allowed and the Additional Director General of Police, Crime Branch shall decide as to the officer to whom the further investigation has to be entrusted and shall issue orders in that respect, within two weeks from the date of receipt of a copy of this judgment.

Sd/- B.KEMAL PASHA, JUDGE

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[True copy]

P.S. to Judge